

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VICKIE MARIE HAYMER,

Defendant-Appellant.

UNPUBLISHED

October 3, 2006

No. 261649

Calhoun Circuit Court

LC No. 2004-003970-DL

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right her bench-trial conviction for criminal contempt, MCL 600.1701. Defendant was sentenced to seven days in jail and ordered to pay a fine, costs, and fees totaling \$730.¹ We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

On December 8, 2004, defendant attended a juvenile delinquency hearing concerning her minor daughter. The referee advised the minor of the charge against her and asked if she understood the nature of the charge. Defendant immediately interjected, stating aloud that the minor did not understand. The referee stated that the minor needed to answer the question for herself, but defendant continued to speak.

Both the referee and defendant raised their voices as the exchange continued. An attorney who was waiting in the hallway entered the courtroom due to what he described as loud and boisterous yelling and screaming that seemed to be getting out of control. The attorney testified that every time the referee tried to say something, defendant interrupted and yelled louder. The referee repeatedly tried to calm defendant, and warned defendant that if such behavior continued she would be held in contempt of court. Defendant responded with comments such as “Listen, Lady . . . I am tired of you anyway,” “You are biased,” “You are prejudiced,” and “You shouldn’t be over a . . . hearing with my child You shouldn’t be over no hearing.” When the referee advised defendant, “Ma’am, you will respect this Court,”

¹ We note that the maximum penalty for criminal contempt is generally a fine of \$250, 30 days’ imprisonment, or both. MCL 600.1715(1). However, an individual convicted of criminal contempt may also be required to pay certain fees and costs “in addition to the other penalties which are imposed[.]” MCL 600.1721.

defendant said, “You shouldn’t be holdin’ a hearing. Respect you, Lady, please.” Defendant also stated, “I don’t care about your contempt of court.”

When a security officer was summoned to escort defendant from the room, defendant resisted and claimed to have a medical condition that precluded her from being handcuffed. Defendant then threatened to submit a complaint to the judicial tenure commission and to file a grievance with the attorney grievance commission. The referee was able to continue the hearing only after defendant had been removed.

At the contempt trial in the circuit court, defendant testified that she had simply been trying to explain to the referee that her daughter did not understand the charge against her. Defendant admitted raising her voice, but claimed she was yelling only because the referee was yelling as well. Defendant was found guilty of criminal contempt.

The contempt power of the Michigan courts is codified in MCL 600.1701. In general, the issuance of an order of contempt is in the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *People v Ahumada*, 222 Mich App 612, 617; 564 NW2d 188 (1997). However, special rules apply in the context of criminal contempt; the elements of criminal contempt must be proven beyond a reasonable doubt. *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App 697, 714; 624 NW2d 443 (2000); *People v Little*, 115 Mich App 662, 665; 321 NW2d 763 (1982).

When a contempt is direct, occurring in the immediate view and presence of the court, the court may punish the contemnor summarily. MCL 600.1711(1). However, when the contempt is indirect, not occurring in the immediate view and presence of the court, the court may punish the alleged contemnor only “after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend.” MCL 600.1711(2). Thus, in the case of indirect criminal contempt, a trial or other proceeding is necessary to allow the taking of proofs and the opportunity to defend.

To support a conviction of criminal contempt, the prosecution must prove beyond a reasonable doubt (1) the willful disregard or disobedience of a court order,² and (2) a contempt that is clearly and unequivocally shown. *People v Boynton*, 154 Mich App 245, 247; 397 NW2d 191 (1986). Upon appeal of a conviction for criminal contempt, we do not weigh the evidence or the credibility of the witnesses. *The Cross Co v UAW Local 155 (AFL-CIO)*, 377 Mich 202, 217-218; 139 NW2d 694 (1966). The trial court’s findings must be affirmed if there is competent evidence to support them. *Id.* at 218.

The punishment of contemptuous conduct is not among the enumerated powers of juvenile court referees. MCL 712A.10(1). Thus, “[r]eferees in juvenile court proceedings . . . may not issue contempt orders.” *In re Contempt of Steingold*, 244 Mich App 153, 157; 624 NW2d 504 (2000). Instead, the power to punish contemptuous conduct occurring before a juvenile court referee belongs to the juvenile court itself, which is charged with overseeing the delinquency proceeding. MCL 712A.26. Thus, when contemptuous conduct occurs in the

² The willful disregard of a juvenile court referee’s order is functionally equivalent to the willful disregard of a court order for purposes of establishing criminal contempt.

presence of a referee, the referee must refer the matter of issuing a contempt order to the superintending court.³

In this case, although defendant's allegedly contemptuous conduct occurred in the presence of the referee, it did not occur in the immediate presence and view of the court itself. Because juvenile court referees cannot summarily punish contempt that occurs in their presence, *Steingold, supra* at 157, the referee properly referred the matter to the circuit court for trial.

A bench trial was held, during which the circuit court took the testimony of several eyewitnesses and heard the tape recording of the juvenile delinquency proceeding. This evidence revealed that defendant would not let the referee communicate directly with the minor during the delinquency proceeding, even when informed by the referee that the minor needed to respond for herself. Defendant continually interrupted the referee and made disrespectful remarks, even after the referee directed defendant to stop interrupting the proceedings. Defendant's comments and the volume of her voice, as testified to by the witnesses, clearly showed a disregard for the referee's authority and the referee's orders. Further, defendant's behavior impeded the ability of the referee to conduct the proceeding itself. The referee could not continue with the proceeding until defendant was escorted out of the room by a security officer.

Based on the testimony and other proofs presented in this case, we conclude that there was competent evidence to support the trial court's finding that the elements of criminal contempt were proven beyond a reasonable doubt.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper

³ The court that was charged with overseeing the juvenile delinquency proceeding in this case was apparently the Family Division of the Calhoun Circuit Court.